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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

XIANZHAO PENG,  
LEI JIANG,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary of the  
Department of Homeland Security;  
EMILIO T. GONZALES, Director of  
U.S. Citizenship and Immigration Services;  
GERARD HEINAUER, Director of  
Nebraska Service Center of USCIS;  
CHRISTINA POULOS, Director of  
California Service Center of USCIS;  
ROBERT S. MUELLER, III, Director of  
Federal Bureau of Investigation;  
PETER D. KEISLER, Acting Attorney General  
of U.S. Department of Justice;

Defendants.

No. C 07-5651 PVT

**ANSWER**

Defendants hereby submit their answer to Plaintiffs' Complaint for Writ in the Nature of  
Mandamus and Declaratory Judgment.

**INTRODUCTION**

1. Defendants admit the allegations in Paragraph One; however, Defendants deny that they  
have improperly withheld action on Plaintiffs' applications to their detriment.

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2. Paragraph Two consists of Plaintiffs' allegations regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny the allegations in this paragraph.

3. Defendants admit the allegations in Paragraph Three.

#### **PARTIES**

4. Defendants admit the allegations in Paragraph Four.

5. Defendants admit the allegations in Paragraph Five.

6. Defendants admit the allegations in Paragraph Six.

7. Defendants admit the allegations in Paragraph Seven.

8. Defendants admit the allegations in Paragraph Eight.

9. Defendants admit the allegations in Paragraph Nine.

10. Defendants admit the allegations in Paragraph Ten.

#### **EXHAUSTION OF REMEDIES**

11. Defendants deny the allegations in Paragraph Eleven.

#### **CAUSE OF ACTION**

12. Defendants admit the allegations in Paragraph Twelve.

13. Defendants admit the allegations in Paragraph Thirteen.

14. Defendants admit the allegations in Paragraph Fourteen.

15. Defendants are without sufficient information to admit or deny the allegations in Paragraph Fifteen.

16. Defendants are without sufficient information to admit or deny the allegations in Paragraph Sixteen.

17. Defendants are without sufficient information to admit or deny the allegations in Paragraph Seventeen.

18. Defendants admit the allegations in Paragraph Eighteen.

19. Defendants admit the allegations in Paragraph Nineteen.

20. Defendants admit the allegations in Paragraph Twenty and notes that a RFE was sent to Plaintiffs' last know attorney of record on file with the USCIS.

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21. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty-One.

22. Defendants admit the allegations in Paragraph Twenty-Two. Any public information regarding processing times refers to cases within the control of USCIS, not cases with pending FBI name checks.

23. Defendants deny the allegations in Paragraph Twenty-Three.

24. Defendants deny the allegations in Paragraph Twenty-Four.

25. Defendants deny the allegations in Paragraph Twenty-Five.

26. Defendants are without sufficient information to admit or deny the allegations Paragraph Twenty-Six.

(a) Defendants admit the allegations in Paragraph Twenty-Six subsection a.

(b) Defendants are without sufficient information to admit or deny the allegations Paragraph Twenty-Six subsection b.

27. Defendants deny the allegations in Paragraph Twenty-Seven.

28. Defendants deny the allegations in Paragraph Twenty-Eight.

29. Defendants admit the allegations in Paragraph Twenty-Nine.

30. Defendants admit the allegations in Paragraph Thirty.

31. Defendants admit the allegations in Paragraph Thirty-One.

32. Defendants admit the allegations in Paragraph Thirty-Two.

#### **PRAYER**

33. Paragraph Thirty-Three consists of Plaintiffs' prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

#### **FIRST AFFIRMATIVE DEFENSE**

The court lacks jurisdiction over the subject matter of this action.

#### **SECOND AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE**

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiffs.

**FOURTH AFFIRMATIVE DEFENSE**

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

**FIFTH AFFIRMATIVE DEFENSE**

Defendants are processing the applications referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiffs, dismissing Plaintiffs' Complaint with prejudice; that Plaintiffs take nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: January 8, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO  
United States Attorney

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/s/  
ILA C. DEISS  
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Attorneys for Defendants